

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL ANGELO DRAKE,  
Appellant,  
vs.  
WARDEN, NEVADA STATE PRISON,  
BILL DONAT,  
Respondent.

No. 53094

**FILED**

JAN 30 2009

TRACEY K. LINDEMAN  
CLERK OF SUPREME COURT  
BY J. Moor  
DEPUTY CLERK

ORDER DISMISSING APPEAL

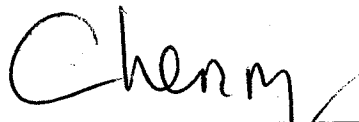
This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus and decision to deny motion to alter or amend judgment. First Judicial District Court, Carson City; William A. Maddox, Judge.


Our review of this appeal reveals a jurisdictional defect. Specifically, the district court entered its order denying appellant's petition on December 2, 2008. The district court served notice of entry of that order on appellant on December 3, 2008. Appellant did not file the notice of appeal, however, until January 12, 2009, after the expiration of the thirty-day appeal period prescribed by NRS 34.575. "[A]n untimely notice of appeal fails to vest jurisdiction in this court." Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

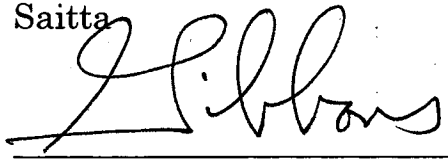
Further, to the extent that appellant appealed the denial of his motion to alter or amend judgment, our review of this appeal reveals a further jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). No

statute or court rule provides for an appeal from a decision denying the  
aforementioned motion. Accordingly, we conclude that we lack jurisdiction  
to consider this appeal, and we

ORDER this appeal DISMISSED.

  
\_\_\_\_\_, J.  
Cherry

  
\_\_\_\_\_, J.  
Saitta

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. William A. Maddox, District Judge  
Michael Angelo Drake  
Attorney General Catherine Cortez Masto/Carson City  
Carson City Clerk